IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

CRP.No. 1740 of 1999(D)

AGAINST THE ORDER DATED 17/08/1999 IN IA 2597/99 IN OS.773/1993 of II ADDL.SUB COURT,KOZHIKODE

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REVN. PETITIONER/2ND RESPONDENT:

A.THAHA MOULAVI, S/O.ABDUKUNHU,
PATHIYUR AMSOM, ERUVADESOM,
KARTHIKAPPALLY TALUK

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS/PETITIONERS & 1ST RESPONDENT:

1. SAMASTA KERALA JAM IYYATHUL ULAMA,
FRANCIS ROAD, REP. BY ITS SECRETARY
C.SAINUDDIN MUSALIAR.

2. CHERUSSERY SAINUDDIN MUSSALIAR, S/O.MUHAMMED MUSSALIAR, AGED 63 YEARS, KOLATHUR AMSOM, KONDOTTY DESOM, ERNAD TALUK.

3. V.N.AHAMMEDKUTTY ALIAS BABUTTY MUSALIAR, S/O.BEERANKUTTY MUSALIAR, RESIDING AT NECHIYIL HOUSE, EDAKKARA AMSOM, DESOM, ERNAD TALUK.

BY ADV. SRI.R.RAMADAS
SRI.P.K.MOHAMMED PUZHAKKARA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NO.3656 OF 1999 IN C.R.P.NO.1740 OF 1999

DISMISSED

3.8.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE,J.

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C.R.P.No.1740 of 1999

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Dated: 3rd August, 2007

ORDER

This C.R.P. is directed against an order allowing an application filed by the defendants for reopening the evidence. The application for reopening was resisted by the respondents mainly on the reason that the relief sought for is barred by the order of this court in C.R.P.No.1505 of 1998. But as submitted by the learned counsel for the petitioner and as rightly found by the learned Subordinate Judge in his order the order in the earlier C.R.P. will not operate as res judicata in that the earlier C.R.P. was directed against an order dismissing an adjournment application and the reopening petition itself is filed only after earlier C.R.P. was disposed of. But then, I find force in the submission of Mr.Harikumar that there has been considerable lethargy on the side of the petitioner in the matter of adducing evidence. Even the reopening petition was filed two/three months after earlier C.R.P. was disposed of. Though I do not find any jurisdictional infirmity about the impugned order so as to warrant interference under the revisional jurisdiction of this court under Section 115 C.P.C., I feel that the learned Subordinate Judge was not justified in allowing the application without imposing any conditions.

Accordingly, in modification of the impugned order, I dispose of the C.R.P. issuing the following directions:

1. The impugned order is made conditional upon the respondents paying a sum of Rs.1000/- by way of cost to the petitioner either directly or through his counsel in this court within three weeks from today.

2. The learned Subordinate Judge will give top priority to the trial of the suit and will special list the same in the next available special list and try the suit on a day to day basis. At any rate, the suit will be finally disposed of within four weeks of the commencement of the examination of the principal witness on the side of the respondent.

srd **PIUS C.KURIAKOSE, JUDGE**